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EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, Dc 20554

Re: Presubscribed Interexchange Carrier Charges, CC Docket 02-53, CCB/CPD File No. 01-12, RM 10131

Dear Ms. Dortch:

In its comments, Verizon demonstrated that the Commission's $5.00 "safe harbor" for the presubscribed interexchange carrier ("PIC") change charge continues to be reasonable in light of market-based rates and of the electronic and manual procedures that must be carried out by the local exchange carrier to change a customer's preferred interexchange carrier. On November 18, 2002, IDT filed an *ex parte* urging the Commission to reduce the change charge from the current level of $5.00 and to eliminate it entirely when an interexchange carrier acquires, through a sale or transfer, either part or all of another telecommunications carrier's subscriber base, when the selling carrier has declared bankruptcy. The Commission should reject both IDT's attacks on the local exchange carrier's PIC charges and its proposal to allow them no cost recovery at all when they process PIC change orders associated with sales of customer accounts by interexchange carriers. For such large volumes of transfers, the local exchange carriers must perform the same tasks as they do in processing other PIC change orders submitted by interexchange carriers.

IDT's proposal to eliminate the PIC change charge entirely when an interexchange carrier transfers its customer base to another carrier has no merit. The Commission already addressed this issue in its order adopting streamlining carrier change processes for carrier-to-carrier sales or transfers of subscriber bases. ***See*** *2000 Biennial Review – Review of Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, 16 FCC Rcd 11218 (2001). In that order, the Commission allowed a carrier acquiring another carrier's customer base through an acquisition of assets (such as customer lines or accounts), or a transfer of corporate control to comply with Section 258 of the Act by providing advance written notice to the customers of the change in carriers. ***See*** id., ¶ 10; 47 C.F.R. § 64.1120(e). The Commission's rule makes it clear that the acquiring carrier is responsible for the PIC change charges associated with the transfer. ***See*** 16 FCC Rcd at 11218, ¶ 25; 47 C.F.R. § 64.1120(e)(3)(iii).

As in all other customer acquisitions, the PIC change charge is applicable in a transfer as a result of a sale in bankruptcy, because the local exchange carrier still has to perform physical work to process the change order, make switch identification changes, adjust billing systems, provide notification to end users and associated carriers, and deal with customer inquiries. The orders would be submitted to the local exchange carrier electronically in the same way that the interexchange carriers submit orders today in batches through electronic means. IDT is requesting that the local exchange carrier do this work for free to encourage carriers to bid for the customers of bankrupt carriers. There is no basis for requiring the local exchange carrier to subsidize an interexchange carrier's acquisition of another carrier's subscriber base. The cost of PIC changes, along with the other costs that the acquiring carrier incurs, are part of the financial equation that the acquiring carrier takes into account in deciding how much to bid for another carrier's assets. It may affect the amount that a carrier would pay for another carrier's customers, but it is still much less than the marketing costs of acquiring a new customer. Therefore, it does not create a barrier to the acquisition of a bankrupt carrier's assets. Regardless, there is no basis for requiring the local exchange carrier to subsidize the costs of transfers of customers between other carriers.

IDT's claim (at 2-4) that the $5.00 PIC change charge impedes competition in the interexchange market is belied by the significant amount of "churn" that all interexchange carriers experience. If the cost of implementing a PIC change were a barrier, customers would not change carriers so readily.

IDT argues (at 7) that the Commission's existing "safe harbor" rate of $5.00 for PIC change charges is not cost-based and that the Commission should reduce the safe harbor to $1.49, citing the comments of ASCENT. This proposal has been thoroughly discredited. It is based on the fact that BellSouth had filed a $1.49 PIC change charge in 1990. But BellSouth explained in its June 14, 2002 comments (at 4-6) that it filed this rate based on an incorrect assumption that only a small number of PIC change orders would need manual processing in the future, an assumption that turned out to be erroneous. BellSouth also explained that its costs to process PIC changes both manually and electronically have increased since 1990, and that it has incurred additional costs for administration of slamming rules and PIC freezes.

IDT argues (at 8) that the PIC change charge should not include slamming and PIC freeze costs because these activities did not exist when the PIC change charge was first established. This argument has no merit. The costs of new procedures that the Commission has prescribed to prevent unauthorized PIC changes are part of the PIC process and they should be recovered when a customer or a carrier orders a PIC change.

IDT argues (at 10-11) that LECs receive a double-recovery when they implement both an intraLATA PIC change and an interLATA PIC change at the same time. However, the charge for an intraLATA PIC change is assessed by the local exchange carrier under the state tariffs and it is outside of the Commission's jurisdiction. Moreover, the federal and state PIC change charges recover the costs of separate activities. The local exchange carrier incurs processing costs to carry out a customer's choice of an intraLATA toll carrier that are in addition to the costs of making an interLATA PIC change. Each service is negotiated and physically put in the switch as a separate activity. The interLATA PIC and the intraLATA PIC cannot be populated simultaneously in the switch as each has its own field-led identifier and must be updated separately. These additional provisioning, operational, and billing costs must be recovered through the state PIC change charge.

The Commission should reject IDT's arguments. Its proposal to leave the local exchange carriers with no cost recovery at all when processing sales of customer bases between interexchange carriers in bankruptcy proceedings demonstrates its indifference to the actual costs of administering PIC changes. The Commission, however, cannot force the local exchange carriers to subsidize the business decisions of carriers who decide, for their own reasons, to acquire another carrier's assets.

Sincerely,

Joseph DiBella

cc: Tamara Preiss
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